

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**

Docket Number
191314-1011

In re Application of: **Dennis William Mueller et al.**

Application No. **10/743,896**

Filed: **December 22, 2003**

For: **PORTABLE X-RAY DIFFRACTOMETER**

The owner*, MetScan Technologies, LLC of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term of **prior patent No. 6,697,453 B1** as the term of said patent is defined in 35 U.S.C. 154 and 173, and as the term of said **prior patent** is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the **prior patent**, "as the term of said **prior patent** is presently shortened by any terminal disclaimer," in the event that it later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims cancelled by a reexamination certificate;
- is reissued; or
- is any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 34,367

Signature

1-5-05
Date

Jeffrey R. Kuester

Typed or printed name

(770) 933-9500

Telephone Number

- Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this statement. See MPEP §324.

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Effective on 12/08/2004

Pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005

JAN 10 2005

Complete if Known

Application Number	10/743,896
Filing Date	December 22, 2003
First Named Inventor	Mueller, et al.
Examiner Name	Ho, Allen C.
Art Unit	2882
Attorney Docket No.	191314-1011

 Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT (\$)** 130.00
 Check Credit Card Money Order None Other (please identify): _____

 Deposit Account Deposit Account Number: 20-0778 Deposit Account Name: Thomas, Kayden, Horstemeyer Risley, L.L.P.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

<input type="checkbox"/> Charge fee(s) indicated below	<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17	<input checked="" type="checkbox"/> Credit any overpayments

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Fee Calculation**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	Filing Fees		Search Fees		Examination Fees		
	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fees Paid (\$)
Utility	300	150	500	250	200	100	0
Design	200	100	100	50	130	65	0
Plant	200	100	300	150	160	80	0
Reissue	300	150	500	250	600	300	0
Provisional	200	100	0	0	0	0	0

2. EXCESSIVE CLAIM FEESFee Description

Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent

Small Entity

Fee (\$) Fee (\$)

50 25

Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent

200 100

Multiple dependent claims

360 180

Total Claims

-21 =

Extra Claims

0

Fee (\$)

50

Fee Paid (\$)

0

Multiple Dependent ClaimsFee (\$) Fee Paid (\$)

0 0

HP = highest number of total claims paid for, if great than 20

Indep. Claims

-3 =

Extra Claims

0

Fee (\$)

200

Fee Paid (\$)

0

HP = highest number of total claims paid for, if great than 20

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 USC 41(a)(1)(G) and 37 CFR 1.16(s)

Total Sheets

-100 =

Extra SheetsNumber of each additional 50 or fraction thereof

(round up to a whole number) x

Fee (\$)

x

Fee Paid (\$)

0

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fee Paid (\$)

0

Other: Terminal Disclaimer

130

SUBMITTED BY

Complete (if applicable)

Typed or Printed Name	Jeffrey R. Kuester	Registration No. 34,367	Telephone Number	770-933-9500
Signature			Date	1-5-05

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) and application. Confidentiality is governed by 35 USC 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. Send to Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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